

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 559

Introduced by Kristensen, 37; Thompson, 14

Read first time January 19, 1999

Committee: Transportation

A BILL

- 1 FOR AN ACT relating to public health; to adopt the Medicaid
- 2 Telehealth Development Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 1 to 8 of this act shall be known and
2 may be cited as the Medicaid Telehealth Development Act.

3 Sec. 2. The Legislature finds:

4 (1) Lack of primary care, specialty providers, and
5 transportation continue to be significant barriers to access to
6 health care services in some medically underserved rural and urban
7 areas;

8 (2) Parts of Nebraska have difficulty attracting and
9 retaining health care practitioners, as well as supporting local
10 health care facilities to provide a continuum of health care. As
11 of January 1, 1999, fifty counties, areas, or populations have
12 received federal designation as primary care health professional
13 shortage areas or populations;

14 (3) Many health care practitioners in medically
15 underserved areas are isolated from mentors, colleagues, and the
16 information resources necessary to support them personally and
17 professionally;

18 (4) Telehealth is broadly defined as the use of
19 information technology to deliver health care services and
20 information from one location to another;

21 (5) Telehealth is part of a multifaceted approach to
22 address the problem of health care practitioner distribution and
23 the development of health systems in medically underserved areas by
24 improving communication capabilities and providing convenient
25 access to up-to-date information, consultations, and other forms of
26 support;

27 (6) The use of telecommunications to deliver health care
28 services has the potential to reduce costs, improve quality, change

1 the conditions of practice, and improve access to health care in
2 rural and other medically underserved areas;

3 (7) Telehealth has been utilized in one form or another
4 for thirty years and telehealth projects currently exist in at
5 least forty states and eleven states currently have medicaid
6 telehealth reimbursement plans;

7 (8) Telehealth will assist in maintaining or improving
8 the physical and economic health of medically underserved
9 communities by keeping the source of health care services in the
10 local area, strengthening the local health infrastructure, and
11 preserving local health-care-related jobs;

12 (9) Consumers of health care services will benefit from
13 telehealth in many ways, including expanded access to health care
14 practitioners, faster and more convenient treatment, better
15 continuity of care, better collaboration between local providers
16 and medical specialists, reduction of lost work time and travel
17 costs, and the ability to remain with support networks;

18 (10) Telehealth does not change the existing scope of
19 practice of any health care practitioner;

20 (11) It is the intent of the Legislature that telehealth
21 not replace health care practitioners or relegate them to a less
22 important role in the delivery of health care services. The
23 fundamental health care practitioner-patient relationship can be
24 not only preserved but also augmented and enhanced through the use
25 of telehealth; and

26 (12) Without the assurance of payment and the resolution
27 of legal and policy barriers, the full potential of telehealth will
28 not be realized.

1 Sec. 3. For purposes of the Medicaid Telehealth
2 Development Act:

3 (1) Department means the Department of Health and Human
4 Services Finance and Support;

5 (2) Health care practitioner means a medicaid-enrolled
6 provider; and

7 (3) Telehealth means use of telecommunications service to
8 deliver health care, diagnosis, consultation, treatment, or
9 education to providers and patients separated by distance but does
10 not include a telephone conversation or an electronic mail message
11 between a health care practitioner and a patient.

12 Sec. 4. The Medicaid Telehealth Development Act does not
13 alter the scope of practice of any health care practitioner or
14 authorize the delivery of health care services in a setting or
15 manner not otherwise authorized by law.

16 Sec. 5. (1) Prior to the delivery of health care
17 services through telehealth, the health care practitioner who has
18 ultimate authority over the care or primary diagnosis of the
19 patient shall obtain verbal and written informed consent from the
20 patient.

21 (2) The informed consent required by subsection (1) of
22 this section shall ensure that at least all of the following
23 information is provided to the patient orally and in writing:

24 (a) That the patient retains the option to withhold or
25 withdraw consent at any time without affecting the right to future
26 care or treatment and without risking the loss or withdrawal of any
27 program benefits to which the patient would otherwise be entitled;

28 (b) That all existing confidentiality protections apply;

1 (c) That the patient has access to all medical
2 information resulting from a telehealth consultation and that
3 copies of the information are available for a reasonable fee; and

4 (d) That dissemination of any patient identifiable images
5 or information from the telehealth interaction to researchers or
6 other entities shall not occur without the consent of the patient.

7 (3) A patient shall sign a written statement prior to the
8 delivery of health care services through telehealth, indicating
9 that the patient understands the written information provided
10 pursuant to subsection (2) of this section and that this
11 information has been discussed with the health care practitioner or
12 his or her designee.

13 (4) The written consent signed by the patient shall
14 become part of the patient's medical record.

15 (5) The failure of a health care practitioner to comply
16 with this section constitutes unprofessional conduct for purposes
17 of the sections 71-147 and 71-148.

18 (6) When the patient is a minor or is incapacitated or
19 mentally incompetent such that he or she is unable to give informed
20 consent, this section applies to the patient's representative.

21 (7) Except for the confidentiality protections described
22 in subdivision (2)(c) of this section, this section does not apply
23 when the patient is not directly involved in the telehealth
24 interaction, including, but not limited to, cases in which a health
25 care practitioner consults with another health care practitioner.

26 (8) This section does not apply in an emergency situation
27 in which the patient is unable to give informed consent and the
28 representative of the patient is not available.

1 (9) This section does not apply to a patient who is a
2 person committed to the Department of Correctional Services as
3 defined in section 83-170.

4 Sec. 6. (1) On and after July 1, 1999, in-person contact
5 between a health care practitioner and a patient shall not be
6 required under the medical assistance program established in
7 sections 68-1018 to 68-1025 and Title XXI of the federal Social
8 Security Act, as amended as of the effective date of this act, for
9 health care services appropriately delivered through telehealth,
10 subject to reimbursement policies developed pursuant to such
11 program and federal act to compensate licensed health care
12 practitioners who deliver, through telehealth, health care services
13 that are otherwise eligible for reimbursement pursuant to such
14 program and federal act. This section also applies to managed care
15 plans which contract with the department pursuant to the Managed
16 Care Plan Act only to the extent that both subdivisions (a) and (b)
17 of this subsection apply:

18 (a) Health care services delivered through telehealth are
19 covered by and reimbursed under the medicaid fee-for-service
20 program; and

21 (b) Managed care contracts with managed care plans are
22 amended to add coverage of health care services delivered through
23 telehealth and any appropriate capitation rate adjustments are
24 incorporated.

25 (2) The reimbursement rate for a telehealth consulting
26 provider shall, as a minimum, be set at the same rate as the
27 medical assistance program payment rate for a comparable in-person
28 consultation.

1 (3) The medical assistance program, including health care
2 services delivered by managed care plans, shall not be required to
3 pay for a consultation provided by the health care practitioner by
4 telephone or facsimile machine.

5 (4) The department shall not require a telehealth
6 consultation if the patient has the option to choose a physician
7 reasonably available where a patient resides or works.

8 (5) The department shall establish rates for transmission
9 cost reimbursement, considering, to the extent applicable,
10 reductions in costs for travel by health care practitioners to
11 serve recipients, recipients' travel costs to access health care
12 practitioners, and such other factors as it deems relevant.

13 Sec. 7. A health care facility licensed pursuant to
14 sections 71-2017 to 71-2029 that receives reimbursement under the
15 Medicaid Telehealth Development Act for consultations delivered by
16 physicians who practice in such facility and other health care
17 practitioners who obtain consultations under the act shall
18 establish quality of care protocols and patient confidentiality
19 guidelines to ensure that telehealth consultants meet the
20 requirements of the act and acceptable patient care standards.

21 Sec. 8. The department shall adopt and promulgate rules
22 and regulations to carry out the Medicaid Telehealth Development
23 Act, including rules and regulations to:

24 (1) Ensure that appropriate care is provided to medical
25 assistance program and Medicare patients who receive health care
26 services that are delivered through telehealth; and

27 (2) Prevent abuse and fraud in the use of telehealth
28 services for medicaid patients, including, but not limited to,

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- 1 filing of claims and records required to be maintained in relation
- 2 to health care services delivered through telehealth.